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No. 80-427

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1980

FAIR ASSESSMENT IN REAL ESTATE ASSOCIATION, INC., J. DAVID CASSILLY, and LYNN F. CASSILLY,
*Petitioners,*

v.

GENE McNARY, WILLIAM A. SKAGGS, EDMUND J. PUNG, CHARLES T. SCHNEIDER, FRANK J. ANTONIO, DONALD G. WILLIAMS, TOM R. OTTO, and STEPHEN C. SNYDER,
*Respondents.*

On Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

## JOINT APPENDIX

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## TABLE OF CONTENTS*


| | Page |
|---|---|
| Relevant Docket Entries | 1 |
| Complaint for Damages for Violation of Civil Rights | 3 |
| Motion to Dismiss | 15 |


* The orders entered by the courts below have previously been reproduced in the Petition for Certiorari.

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On Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

## JOINT APPENDIX

### RELEVANT DOCKET ENTRIES

**United States District Court, Eastern District of Missouri**

| | |
|---|---|
| July 2, 1979 | Complaint for Damages for Violation of Civil Rights filed. |
| August 13, 1979 | Motion to Dismiss by Defendants McNary, Skaggs, Antonio, Pung, and Schneider filed. |
| August 16, 1979 | Answer of Defendants Williams, Otto, and Snyder filed. |

November 7, 1979 Order and Memorandum entered by Judge John F. Nangle.

**United States Court of Appeals for the Eighth Circuit**

July 15, 1980 Order entered.

IN THE UNITED STATES DISTRICT COURT
for the
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

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No. 79-0805-C(3)

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Fair Assessment In Real Estate Association, Inc.; and

J. David Cassilly and
Lynn F. Cassilly,
Plaintiffs,

v.

Gene McNary; William A. Skaggs; Edmund J. Pung; Charles T. Schneider; Frank J. Antonio; Donald G. Williams; Tom R. Otto; and Stephen C. Snyder,
Defendants.

## COMPLAINT FOR DAMAGES FOR VIOLATION OF CIVIL RIGHTS

### Introduction

1. This suit, brought pursuant to 42 U.S.C. §1983, seeks compensation for the deprivation of rights conferred on the Plaintiffs by the Fourteenth Amendment to the United States Constitution and the Due Process guarantees of the Constitution of the State of Missouri. The acts complained of are the fruit of the practices of many years for assessing and taxing real estate in St. Louis County. These practices deprived the plaintiffs of their rights to due process of law and the equal protection of the laws in that:

(a) Properties with newly constructed improvements, hereinafter referred to as "new homes," are taxed upon roughly 33 1/3% of current true market value even though properties with older improvements, hereinafter referred to as "old homes," are taxed, on average, upon approximately 22% of current true market value.

(b) Owners of residential property who exercise their right under state law to appeal the St. Louis County Tax Assessor's evaluation, and are successful, are specifically targeted for reassessment the following year.

2. These practices are the result of malicious, willful, invidious, intentional, knowing, and systematic conduct on the part of the defendants. Plaintiffs' claims are for damages suffered during the period 1975-1979 as a result of these practices.

**Jurisdiction And Parties**

3. This suit arises under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. §1983, which provides that any person who, while acting under color of state law, engages in conduct so as to deprive another of his constitutional rights, shall be liable in damages. With respect to Plaintiff FAIR, jurisdiction is conferred upon this court by 28 U.S.C. §1343(3), the jurisdictional counterpart of section 1983, and by 28 U.S.C. §1331, the general federal-question jurisdictional provision. Jurisdiction over the claims of the individual Plaintiffs is based upon 28 U.S.C. §1343(3).

4. Plaintiff Fair Assessment in Real Estate Association, Inc., hereinafter referred to as "FAIR", was founded in 1975 as a public membership unincorporated association composed of real estate taxpayers. Its purpose was and is to promote and encourage equitable enforcement of the property tax laws in Missouri. In 1979, FAIR was incorporated pursuant to the laws of the State of Missouri as a not-for-profit corporation. Prior to its incorporation, Plaintiff FAIR had more than 2,000 members.

5. Plaintiffs J. David Cassilly and Lynn F. Cassilly are husband and wife, and are the owners of a new home located at 15859 Kettington Road in St. Louis County. They reside in St. Louis County.

6. Defendant Gene McNary is the Supervisor of St. Louis County. He resides in St. Louis County.

7. Defendant William A. Skaggs is the Director of Revenue of St. Louis County. He resides in St. Louis County.

8. Defendant Edmund J. Pung was Defendant Skaggs' predecessor in office and was Director of Revenue of St. Louis County until January, 1977. He resides in St. Louis County.

9. Defendant Charles T. Schneider is the Tax Assessor of St. Louis County. He resides in St. Louis County.

10. Defendant Frank J. Antonio was Defendant Schneider's predecessor in office and was Tax Assessor of St. Louis County until February, 1978. He resides in St. Louis County.

11. Defendants Donald G. Williams and Stephen C. Snyder are members of the State Tax Commission, hereinafter referred to as the "STC," of the State of Missouri. Defendant Williams has been a member of the STC since February, 1978. Defendant Snyder was a member of the STC throughout 1978. Defendant Williams resides in Carroll County, and Defendant Snyder resides in Cole County.

12. Defendant Tom R. Otto was a member of the STC until March 1, 1979, and was a member of the STC throughout 1978. He resides in Jackson County.

13. Each defendant is sued herein individually. At all times and for all purposes here in question, each defendant acted under color of law.

14. The property that is the subject of the acts of the Defendants complained of herein is real property located in St. Louis

County. The majority of the acts of the Defendants complained of herein occurred in St. Louis County.

**Statement Of First Claim For Relief**

15. Plaintiffs J. David and Lynn F. Cassilly incorporate by reference as though fully set forth hereinbelow, paragraphs 1 through 14 of this Complaint.

16. Prior to 1974, Defendant Antonio and his predecessors in office took the view that they were required under Article X, §4(b) of the Missouri Constitution to assess for taxation all non-exempt real property in St. Louis County at 33 1/3% of current true market value. Since 1974, Defendant Antonio and his successor, Defendant Schneider, have been required by §137.115 R.S.Mo. to assess such real property at 33 1/3% of current true market value.

17. The imposition of taxes on real property constitutes a taking of property within the scope of the Due Process clauses of the United States and the Missouri Constitutions.

18. Plaintiffs J. David Cassilly and Lynn F. Cassilly purchased their home from the builder in 1974. Plaintiffs J. David and Lynn F. Cassilly are obligated to pay all real estate taxes levied against their property.

19. Defendant Antonio assessed Plaintiffs' property for the year 1975 at a valuation of $27,320.00, which was approximately 33 1/3% of the then current true market value. Based on this valuation and the applicable tax rate, the plaintiffs were required to pay, and did pay, taxes in the amount of $2253.90 for 1975, and $2256.63 for 1976.

20. In 1977 Plaintiffs pursued their adminstrative remedies and appealed Defendant Antonio's assessed valuation of $27,320.00 to the St. Louis County Board of Equalization. The result of this appeal was a reduction in the valuation of their property to $23,600.00 which was approximately 29% of the

1975 true market value. Based on this valuation and the applicable tax rate, Plaintiffs were required to pay, and did pay, taxes in the amount of $1,956.44 for 1977.

21. In 1978, Defendants Antonio and Schneider again assessed Plaintiffs' property at a valuation of $27,320.00. Plaintiffs again appealed; this appeal is still pending before the STC. Plaintiffs paid taxes, under protest pending outcome of the appeal, in the amount of $2378.21 for 1978.

22. Plaintiffs have not yet received from Defendant Schneider notification of assessed value for 1979, but allege that they are informed and believe it will be the same as it was in 1978, $27,320.00, and that they will be required to pay taxes at least in the amount of $2166.00.

23. In so valuing Plaintiffs' property, Defendants Antonio and Schneider discriminated invidiously against Plaintiffs and took their property without due process of law in violation of Plaintiffs' rights under the Fourteenth Amendment to the United States Constitution and under the Due Process guarantees of the Constitution of the State of Missouri, in that:

(a) The last county-wide reassessment of real property in St. Louis County was completed in 1961. Property was assessed at that time at approximately 33 1/3% of true market value. Since 1961, there has been no system whatsoever for periodic county-wide reassessment of residential property in St. Louis County.

(b) Defendants Antonio and Schneider have continuously assessed property in St. Louis County so that property generally was assessed at less than the ratio required by law. In 1977, the average assessed-value-to-appraised-value ratio in St. Louis County had fallen to 22.2%. Since 1977, that ratio has remained the same or declined even further.

(c) Notwithstanding this, Defendants Antonio and Schneider have, throughout their tenure in office, assessed thousands of new homes at 33 1/3% of the then current true market value. In 1975, 1976, 1977, and 1978, Defendants Antonio and Schneider assessed Plaintiffs' property at a level greatly in excess of the levels at which property in St. Louis County generally is assessed.

24. In so valuing Plaintiffs' property, Defendants Antonio and Schneider maliciously, willfully, invidiously, systematically, knowingly, and intentionally violated Plaintiffs' constitutional rights as set out above in that:

(a) Throughout their tenure in office, they have had full knowledge of the enormous disparities in the levels of assessment of property in St. Louis County, and have made numerous public statements on said subject. Public statements by the Defendant Antonio on the need for county-wide reassessment date back at least as far as 1966. Defendants Antonio and Schneider were required by law to furnish to the STC. and did furnish, monthly reports showing on an individual basis for ten sales per month, the ratio of assessed value to sales price. Since 1976 they have received copies of thousands of appeals filed with the St. Louis County Board of Equalization, in which the appellant taxpayers sought relief on the basis of Defendants' discrimination against them by virtue of these disparities. They have also been informed through official public sources of these disparities; in particular, by a 1975 report of the Missouri State Auditor that found the weighted average of assessed-value-to-sales-price ratio for St. Louis County to have been 22.8% for the year 1974, and by a 1978 report made on behalf of the STC that found the average-value-to-appraised-value ratio for St. Louis County to have been 22.2% for the year 1977.

(b) They have maliciously, invidiously, intentionally and systematically engaged in, and continue to engage in, the course of conduct that produced the enormous disparities in property assessment levels in St. Louis County. Notwithstanding their full knowledge as set out above, they have willfully failed and refused to correct these practices or to prevent them from recurring. On the contrary, by their acts in reassessing upwards the properties of individuals who had obtained relief from the St. Louis County Board of Equalization, they have demonstrated their purpose to adhere to their unlawful policies and practices.

25. At all times during their tenure in office, Defendants McNary, Skaggs, and Pung have had supervisory responsibility over the operations of the office of Defendants Antonio and Schneider, have been fully aware of the policies of said office, and have directed and acquiesed in the operations of the office in carrying out such policies. Notwithstanding their full knowledge, they have maliciously, invidiously, and willfully failed and refused to correct these practices or to prevent them from reoccuring. Thus, they have systematically, knowingly, and intentionally violated plaintiffs' constitutional rights.

26. Defendants Williams, Otto, and Snyder, as members of the STC, are under a duty to, and have the responsibility for, exercising general supervision over Defendants McNary, Skaggs, and Schneider to the end that state property tax laws are complied with. They are fully aware of the assessment policy in St. Louis County. Notwithstanding their full knowledge, they are maliciously, invidiously, and willfully failing and refusing to correct these practices. They have systematically, knowingly, and intentionally violated Plaintiffs' constitutional rights.

27. All of the defendants, and each of them, during their terms of office have been required pursuant to Article 3, Section 10 of the Constitution of the State of Missouri to ensure that real property taxes be uniform within St. Louis County.

28. The foregoing malicious, willful, systematic, knowing, and intentional discrimination as practiced upon thousands of taxpayers in St. Louis County has been found by the Supreme Court of the State of Missouri to be, and is, clearly unconstitutional.

29. The foregoing unlawful acts and course of conduct have damaged plaintiffs. Had Defendants Antonio and Schneider assessed Plaintiffs' property at the county-wide average rate of 22.2% for the years 1975-1979, said assessed value would have been $18,195.00. Based on this valuation, Plaintiffs' taxes would have been $1501.00 for 1975, $1503.00 for 1976, $1508.00 for 1977, and $1443.00 for 1978. In addition, Plaintiffs have incurred expenses and sustained damages in seeking relief from these unjust assessments.

30. Plaintiffs seek damages against Defendants McNary, Pung, and Antonio for the years 1975 and 1976, against Defendants McNary, Skaggs, and Antonio for 1977, against Defendants McNary, Skaggs, Antonio, Schneider, Williams, Otto, and Snyder for 1978, and against Defendants McNary, Skaggs, Schneider, Williams, Otto, and Snyder for 1979.

**Statement Of Second Claim For Relief**

31. Plaintiffs J. David and Lynn F. Cassilly incorporate by reference as though fully set forth hereinbelow, paragraphs 1 through 24 of this Complaint.

32. In 1977, Plaintiffs successfully appealed their assessment to the St. Louis County Board of Equalization obtaining relief on the grounds that Defendant Antonio had valued Plaintiffs' property at a level greatly in excess of the level at which property in St. Louis County generally is assessed.

33. In the year following Plaintiffs' successful appeal, 1978, Defendants Antonio and Schneider reassessed Plaintiffs' property and revalued it upwards to the very level it had been prior to the appeal, $27,320.00.

34. In 1978, Plaintiffs again appealed their assessment; this appeal is still pending before Defendants Williams, Otto, and Snyder.

35. Plaintiffs have not yet received from Defendant Schneider notification of assessed value for 1979, but allege that they are informed and believe it will be the same as it was in 1978, $27,320.00.

36. By these reassessments of Plaintiffs' property, Defendants Antonio and Schneider discriminated maliciously, willfully, intentionally, knowlingly, systematically, and invidiously against Plaintiffs and took their property without due process of law, in violation of Plaintiffs' rights under the Fourteenth Amendment to the United States Constitution and under the Due Process guarantees of the Constitution of the State of Missouri in that:

(a) With the exception of property to which building permits were issued, there has been no reassessment of homes in St. Louis County since 1961. Plaintiffs were specifically targeted for reassessment, and were reassessed, solely because they exercised their right to appeal tax assessment as granted by law of the State of Missouri and did obtain relief from the County Board of Equalization.

(b) Thousands of other St. Louis County taxpayers, who, like plaintiffs, successfully appealed their assessments on the ground that Defendants Antonio and Schneider had valued their properties at levels greatly in excess of the level at which property in St. Louis County generally is assessed, were similarly reassessed in the year following their appeals.

37. By these reassessments of Plaintiffs' property, Defendants Antonio and Schneider maliciously, willfully, invidiously, systematically, knowingly, and intentionally violated Plaintiffs' constitutional rights as set out above in that:

(a) Throughout their tenure in office they have received copies of all appeals filed with the County Board of Equalization, and of that Board's disposition of said appeals. They have acted with respect to these appellants with full knowledge.

(b) They have made specific arangements [sic] within their office to insure that successful appellants before the County Board of Equalization will be reassessed automatically in the following year. Plaintiffs and others like them were informed by a computer-printed form letter of their reassessments. They have acted with respect to these appellants systematically and intentionally.

(c) They have willfully failed and refused to correct these practices or to prevent them from reoccuring.

38. Plaintiffs incorporate by reference as though fully set forth hereinbelow paragraphs 25, 26, and 27 of this Complaint.

39. The foregoing unlawful acts and course of conduct of Defendants McNary, Skaggs, Antonio, Schneider, Williams, Otto, and Snyder have damaged plaintiffs.

**Statement Of Third Claim For Relief**

40. Plaintiff FAIR was founded in 1975 as a public membership unincorporated association composed of real estate taxpayers. Its purpose was and is to promote and encourage equitable enforcement of the property tax laws in Missouri. In 1979, FAIR was incorporated pursuant to the laws of the State of Missouri as a not-for-profit corporation. Prior to its incorporation, Plaintiff FAIR had more than 2,000 members.

41. Plaintiff FAIR incorporates as though fully set forth hereinbelow paragraphs 1 through 39 of this Complaint.

42. Plaintiff FAIR has assisted its members in pursuing their administrative appeal remedies and has been involved in exten-

sive litigation on behalf of its members. FAIR has incurred expenses in the amount of $50,237.82 in the course of its efforts to obtain enforcement of the state real property tax laws on behalf of its members and has thereby been damaged in said amount.

**Prayer For Relief**

WHEREFORE, Plaintiffs J. David Cassilly and Lynn F. Cassilly pray for judgment on the first claim for relief as follows:

1. Against Defendants McNary, Pung, and Antonio jointly and severally in the sum of $753.00 for the year 1975, and $754.00 for the year 1976;

2. Against Defendants McNary, Skaggs, and Antonio jointly and severally in the sum of $1048.00 for the year 1977;

3. Against Defendants McNary, Skaggs, Antonio, and Schneider, Williams, Otto, and Snyder jointly and severally in the sum of $1223.00 for the year 1978;

4. Against Defendants McNary, Skaggs, Schneider, Williams, Otto, and Snyder jointly and severally in the sum of $1223.00 for the year 1979;

5. Against each of the Defendants severally for punitive damages in the sum of $25,000; and

6. For such other and further relief as the Court deems just and proper.

WHEREFORE, Plaintiffs J. David Cassilly and Lynn F. Cassilly pray for judgment on the second claim for relief as follows:

7. Against Defendants McNary, Skaggs, Antonio, Schneider, Williams, Otto, and Snyder jointly and severally in the sum of $500.00;

8. Against each of the Defendants McNary, Skaggs, Antonio, Schneider, Williams, Otto, and Snyder for punitive damages in the sum of $50,000.00; and

9. For such other and further relief as the Court deems just and proper.

WHEREFORE, Plaintiff FAIR prays for judgment on the third claim for relief as follows:

10. Against Defendants McNary, Pung, and Antonio jointly and severally in the sum of $12,920.52 for the years 1975 and 1976;

11. Against Defendants McNary, Skaggs and Antonio jointly and severally in the sum of $11,139.18 for the year 1977;

12. Against Defendants McNary, Skaggs, Antonio and Schneider jointly and severally in the sum of $14,420.07 for the year 1978;

13. Against Defendants McNary, Skaggs, Schneider, Williams, Otto, and Snyder jointly and severally in the sum of $11,758.05 for the year 1979;

14. Against all the Defendants and each of them for costs of suit and reasonable attorneys fees; and

15. For such other and further relief as the court deems just and proper.

Date: June 30, 1979

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